IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO. 186810 OF 2019
IN
WRIT PETITION (CIVIL) NO. 114 OF 2014

COMMON CAUSE .....PETITIONERS

VERSUS

UNION OF INDIA & ORS. .....RESPONDENTS

WITH

INTERLOCUTORY APPLICATION NOS. 30915 & 153946 OF 2019
IN
WRIT PETITION (CIVIL) No. 114 OF 2014

O R D E R

I.A. NO. 186810 OF 2019:

The applicant, M/s Sarda Mines Pvt. Ltd. (hereinafter, "SMPL"), holds a mining lease for Thakurani (Block B) iron-ore mines at Keonjhar, Odisha. Since, 31.03.2014, its mining operations are lying closed, and it has accordingly approached this Court seeking appropriate directions for resumption of its mining operations.

2. This Court through judgment dated 02.08.2017 in the lead matter, had inter alia held that those mining-lease holders who had extracted minerals either without or in excess of environment/forest clearance, would be liable to deposit the mineral so raised (or its value if disposed off) with the State Government. Owing to a dispute raised by some mining-lease holders, including SMPL, as to whether in fact they had excavated minerals without requisite clearances, this Court referred their cases to the Central Environment Committee (CEC) for quantification of compensatory dues. This CEC submitted a self-speaking report dated 08.05.2019 finding that:

> *"M/s SMPL during the period 2001-02 to 2010-11 has produced 135,34,703 tonnes of excess quantity/illegal production of iron ore in violation of the Environmental Clearance granted by MoEF&CC. Accordingly, M/s SMPL is liable to pay Rs. 933,60,79,689 (Rupees nine hundred thirty three crores sixty lakhs seventy nine thousand six hundred and eighty nine only) in terms of the Judgment dated 02.08.2017 in WP (C) No. 114 of 2014 and Judgment dated 12.11.2018 in IA No. 40 of 2015, IA No. 42 of 2015, IA No. 61 of 2015 in IA No. 40 of 2015, and IA No. 11989 of 2018 in WP (C) No. 114 of 2014 of this Hon'ble Court."*

3. During these proceedings, this Court on 22.11.2017 constituted a committee consisting of Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Anil R. Dave, retired judges of this Court with a specific mandate to ascertain whether there was any violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 or of Rule 37 of the Mineral Concession Rules, 1960. The Committee in Volume VIII of its Report (which was taken on record by

this Court on 24.10.2019) examined SMPL's case and noted that there was no violation of either Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 or of Rule 37 of the Mineral Concession Rules, 1960.

4. In light of these observations, SMPL contends that it is suffering irreparable injury and highlights how it has already lost more than 5 ½ years and how hardly half-a-year of its lease-period is left. Expressing willingness to furnish an undertaking or bank guarantee equivalent to its dues as assessed by the CEC, applicant seeks permission to resume mining operations. Upon notice, learned counsel for the State of Odisha and the CEC express no objection against granting SMPL's prayer for resumption subject to it depositing the CEC-assessed dues and strictly complying with all other mandatory rules, regulations and conditions for conducting mining operations.

5. In view of the above, the application is allowed in the following terms:

(i) SMPL is granted one month's time to deposit the dues as assessed by CEC in its report dated 08.05.2019.

(ii) In addition, SMPL shall file an undertaking to comply with all the rules, regulations and other mandatory provisions for carrying out mining operations.

(iii) After complying with directions (i) and (ii) above, SMPL can resume its mining operations in the leased-area for the remainder of its lease period.

I.A. NO. 30915 OF 2019:

6. M/s Mideast Integrated Steels Ltd. (hereinafter "Mideast") seeks the following reliefs:

> *(a) allow this application and permit the applicant herein to sell 23,51,027.83T of iron ore of different grade and sizes which has been extracted, processed and stacked at the dispatch site within the lease hold area.*
>
> *(b) direct the respondents State of Odisha and its officials to issue Transit Permit for transportation of the said quantity of iron ore of different sizes and grades from the lease hold areas,*
>
> *(c) permit the applicant herein to deposit the entire consideration money received from the buyers to the State of Odisha towards partial satisfaction of the demand raised by the State vide Demand Notices dated 02.09.2017.*
>
> *(d) pass any other order or orders as your Lordships may deem fit and proper in the facts and circumstances of the instant case as well as in the interest of justice.*

7. Mideast was granted licence by the Government of India on 11.05.1994 for setting up a Pig-Iron and Steel Manufacturing Plant near Duburi in Jajpur, Odisha; and it also holds a valid mining lease over 104.68 hectares of Roida-I iron-ore mines in village Tinto-Barbil near Keonjhar, Odisha, valid till 31.03.2020. Notwithstanding the statutory embargo placed by the Notification dated 14.09.2006 which

made it a pre-requisite to first obtain environmental clearance prior to enhanced production, Mideast appears to have extracted mineral over and above what was permissible. Hence, per this Court's judgment dated 02.08.2017 in the lead matter, Mideast was liable to compensate the State of Odisha for the illegal extraction.

8. Consequently, a demand notice for payment of Rs. 924,75,24,283/- by 31.12.2017 was served on Mideast. Upon its failure to deposit the claimed compensation, Mideast's mining operations in Roida-I iron ore mines were stopped with effect from 01.01.2018. However by then, the applicant-company had already excavated, processed and stacked 23,51,027.83 Tons of minerals at the discharge point of Roida-I for onwards transportation to various buyers as well as for captive consumption in its own steel plant. Mideast approached the Orissa High Court for lifting the stacked iron ore and upon being unsuccessful there, has moved the instant application with the prayers reproduced above.

9. The applicant relied upon an order dated 16.07.2019 passed by this Court in I.A. No. 56934 of 2019 in S.L.P. (Civil) No. 20708 of 2016 whereby Mala Roy and other applicants were permitted to sell their stacked iron ore under supervision of State authorities and the proceeds were directed to be deposited with the State towards outstanding dues.

10. Mideast also undertakes to apply the sale proceeds of its stacked iron ore towards the demand raised against it by the State in order to simultaneously augment the State's revenue as well as reduce the applicant's liabilities.

11. Learned counsel for the State of Odisha conveyed no objection to granting the applicant's prayer subject to the iron ore being sold under the supervision of an authority appointed by the State Government, and the sale proceeds mandatorily being deposited with the Special Purpose Vehicle (OMBADC). Both these conditions are agreeable to Mideast, which undertakes to comply with them.

12. The Central Environment Committee (CEC) had also filed a report dated 06.11.2019 recommending that the iron ore already extracted by the applicant may be permitted to be sold subject to the following modalities as specified in paragraph 19 of the report.

> "19. In view of the facts and discussion above relating to the sale of stock of iron ore lying within the mining lease in village Roida-1, Keonjhar District held by M/s. Mideast Integrated Steels Ltd. The following modalities for sale are recommended:
>
> (i) The lessee will make grade-wise stacks of minerals in lots of 4000 MT, and or its multiples following the IBM approved technical formula for conversion of volume to weight applicable to each type of ore like lumps, fines and ROM:
>
> (ii) the sale of the stock of mineral will be conducted by the Odisha Mining Corporation Limited, a Government of Odisha undertaking under the supervision of a Committee headed by the Deputy Director of Mining having jurisdiction over the mining lease and consisting of representatives of the DFO concerned and the Regional Controller of Mines, IBM, Bhubaneswar;

(iii) the lessee is at liberty to suggest the reserve price at which the sale is to be held;

(iv) M/s. OMC may be paid a fee of 0.5% of the sale value, excluding the statutory payments for undertaking the sale of iron ore;

(v) the sale proceeds, after the payment of statutory dues including Royalty, DMF and NMET, shall be deposited in the account of the SPV (OMBADC) being the compensation u/s 21(5) of MMDR Act as ordered in Judgment dated 2.8.2017 of this Hon'ble Court;

(vi) the lessee is responsible for making available the actual quantity of iron ore available to the OMC for sale. Any quantity of ore that is available in excess of the declared stock of 23,51,027.83T shall be the property of the Government and the lessee shall not have claim for such excess stock and if there is any shortfall in the actual available quantity as compared to the declared quantity of 2351,027.83T the lessee shall not be eligible to make good any such shortfall in the declared quantity; and

(vii) the adjustment of the amounts being realized from the present sale towards the compensation amount to be paid by the Applicant/lessee in compliance of the judgment dated 2.8.2017 will be subject to the orders to be passed by this Hon'ble Court in respect of the proceedings under consideration of this Hon'ble Court relating to violation of Rule 37 of MCR."13. Considering the concurring stand taken by the State of Odisha and the CEC, Mideast's application for permission to sell the iron ore of different grades and sizes, lime extracted at its site, is allowed in accordance with the above reproduced CEC's modalities. The sale shall be monitored and supervised by a authority of the State Government which is to be notified within one week, and the proceeds shall be deposited with the JPV and may partially be applied towards the demand raised on 02.09.2017 by the State of Odisha."

13. During the pendency of these proceedings, this Court on 22.11.2017 constituted a committee of Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Anil R. Dave, retired Judges of this

Court with the specific mandate to ascertain violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 or of Rule 37 of the Mineral Concession Rules, 1960. The Committee in volume-V of its report (which was taken on record by this Court on 24.10.2019) though has found that Mideast had sublet its lease rights in violation of Rule 37. However, the aforementioned finding of the Committee does not affect consideration of this present application, and instead might be relevant if and when the applicant requests renewal or extension of its lease period.

14. For the reasons stated above, I.A. No. 30915 of 2019 is allowed and Mideast is permitted to sell the iron ore already mined and stacked by it before 01.01.2018, under supervision of an authority to be appointed by the State Government subject to the sale proceeds being deposited with the Special Purpose Vehicle (OMBADC). The State Government shall appoint the Supervisory Authority within two weeks' and the sale process shall preferably be completed within two months thereafter. Since the applicant-company has neither sought nor have we permitted any resumption of mining operations, the aforesaid regulatory violations are not material for purposes of our determination of permitting sale of already extracted and stacked minerals and application of proceeds towards State arrears.

I.A. NO. 153946 OF 2019:

15. Application is allowed as prayed for. Additional documents have been taken on record.

..... CJI.
(S. A. BOBDE)

..... J.
(B.R. GAVAI)

..... J.
(SURYA KANT)

NEW DELHI
DATED : 15.01.2020

ITEM NO.1501 COURT NO.1 SECTION PIL-W
(For Orders)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 114/2014

COMMON CAUSE Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(IA NO.186810,30915, 153946 OF 2019 IN W.P.(C)NO.114/2014] [HEARD BY HON'BLE THE CHIEF JUSTICE , HON'BLE B.R. GAVAI AND HON'BLE SURYA KANT ,JJ.]

Date : 15-01-2020 These applications were called on for pronouncement of order today.

Counsel for the parties :

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Mr. Harshit Singh, Adv.
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Mr. Gurmeet Singh Makker, Adv.

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Mr. L.R. Singh, Adv.
Ms. Udita Singh, Adv.

Mr. Saurabh Ajay Gupta, Adv.
Mr. Naveen Kumar, AOR

The order of the Bench comprising Hon. the Chief Justice, Hon'ble Mr. Justice B.R. Gavai and Hon'ble Mr. Justice Surya Kant is pronounced today.

The applications are allowed in terms of the signed order. Additional documents have been taken on record in I.A. 153946/2019.

[CHARANJEET KAUR]
A.R.-CUM-P.S.

[INDU KUMARI POKHRIYAL]
ASSTT. REGISTRAR

[Signed order is placed on the file]